

## REMARKS

### I. Summary of Office Action

Claims 1-39 were pending in this application.

Claims 1-16, 18-32, and 35-39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Berson U.S. Patent Publication 2003/0146288 (hereinafter "Berson").

Claims 1-39 are rejected under 35 U.S.C. § 103(a) as being obvious over Abrams U.S. Patent No. 5,653,844 (hereinafter "Abrams") in view of Berson.

### II. Summary of Applicant's Reply

Applicant has amended independent claims 1, 11, 23, 29, and 30 to recite "wherein [the] thermally conductive layer ensures that a detected difference in surface temperature corresponds with a difference in [the indicium's] emissivity values." Support for the claim amendments can be found at, for example, paragraph 26 of applicant's specification. Applicant has canceled claims 26-28 and 35-39 without prejudice.

Reconsideration of this application in light of the amendments and the following remarks is hereby respectfully requested.

### III. Applicant's Reply to the Rejections

The Examiner has rejected applicant's claims 1-16, 18-32, and 35-39 under 35 U.S.C. § 102(b) as being anticipated by Berson. The Examiner has also rejected claims 1-39 under 35 U.S.C. § 103(a) as being obvious over Abrams in view of Berson. The 35 U.S.C. § 103(a) rejections seem to indicate that the 35 U.S.C. § 102(b) rejections are improper, because

the Examiner relies on Abrams to show a number of applicant's claimed features that are not explicitly disclosed in Berson. In any case, applicant submits that the amended claims are patentable over Abrams and Berson, regardless of whether the references are taken alone or in combination.

Abrams describes systems and methods for double-sided printing on a multi-layered laminate. The laminate may include a metallic foil layer (see Abrams, col. 2, line 20). Berson discloses using indicium with varying emissivity to encode information (see Berson, paragraph 35).

Although the Office Action is not clear as to how or why Abrams would be combined with Berson to arrive at applicant's independent claims, applicant would like to take this opportunity to point out that applicant's independent claims patentably improve on both Abrams and Berson. In fact, Berson was invented and is owned by applicant. Moreover, Berson is incorporated by reference into applicant's specification (see applicant's specification, paragraph 5). The invention recited by the currently pending claims was intended to be, and is a patentable improvement over Berson (see, e.g., applicant's specification, paragraphs 5 and 7).

Applicant submits that the invention recited by applicant's amended claims is more than simply applying a Berson indicium (which may comprise two different emissivity values) onto Abrams' foil laminate. More specifically, applicant's amended claims patentably improve on Berson by reciting a conductive layer that "ensures that a detected difference in surface temperature corresponds with a difference in [the indicium's] emissivity values" (applicant's claim 1). And although Abrams' laminate may include a metallic foil layer, the foil serves no functional purpose for

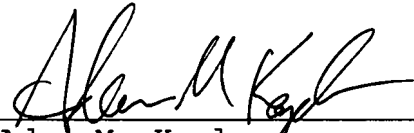
detecting differential emissivity values, let alone in "ensur[ing] that a detected difference in surface temperature corresponds with a difference in [the indicium's] emissivity values" (applicant's claim 1).

Accordingly, for at least these reasons, applicant respectfully submits that independent claims 1, 11, 23, 29, and 30, as amended, are allowable. Claims 2-10, 12-22, 24-25, and 31-34 each depends from one of claims 1, 11, 23, 29, and 30, and are allowable at least because claims 1, 11, 23, 29, and 30 are allowable. ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.)

IV. Conclusion

For at least the reasons set forth above, applicant respectfully submits that this application, as amended, is in condition for allowance. Reconsideration and a favorable action are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam M. Kaplan", is written over a horizontal line.

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